

In response to the RFP, a consulting engineering firm was hired by the Association, and a Phase I Final Report was issued on April 7, 1997.²⁹

Based on an examination of various options for accommodating DTV broadcast facilities atop Mt. Mansfield, the report states that "[a]lthough there remain a number of questions to be resolved in completing the Master Plan, many of the technical, environmental, and legal issues have been examined, with particular emphasis given to the effects on the environment and the Vermont Act 250 process."³⁰ The report continues:

The development of DTV and the federal government's intention to reallocate spectrum currently used for NTSC broadcasting, as well as the possible accommodation of additional television stations, requires a revised Collocation and Telecommunications Management Plan, which will provide for the needed facilities, protect the summit's environment and scenic qualities, and protect the integrity of existing critical public safety communications systems.³¹

The Mount Mansfield broadcasters have committed themselves to expending the necessary resources to comply with Act 250. Clearly, if this is what is happening in Vermont, then it is possible for the same to occur nationwide. A good-faith effort at planning for DTV is the solution to successful compliance with

²⁹Mt. Mansfield Collocation Association, "Mt. Mansfield Telecommunications Study The Transition to DTV Broadcasting Phase I Final Report," April 7, 1997, Hammett & Edison, Inc., Consulting Engineers, San Francisco, CA.

³⁰Id. at 1.

³¹Id. at 5.

state land use law, not the preemption of such laws. The Commission should reject the Petitioners' proposed rule and, instead, direct all broadcasters to make a similar good-faith effort at complying with state and local land use law.

V. CONCLUSION

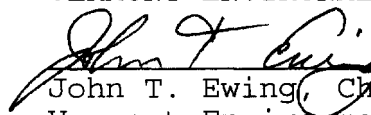
The key to successful DTV service is broadcaster planning. Preemption of state and local land use laws should not be seen as the measure of first resort. Rather, preemption should be a measure of last resort.

In Vermont, the Mt. Mansfield Collocation Association has demonstrated its commitment to sound planning. Due to the Association's planning efforts, Vermont will benefit from both DTV service and environmental protection. If this is possible in Vermont, then the Commission should expect such success nationwide.

Accordingly, the Environmental Board urges the Commission to not adopt any preemptive measures. If the Commission does conclude that some level of preemption is necessary, it should not be of the "unchecked" variety which the Petitioners' proposal typifies. Any preemption rule should leave as much control as possible with the states. Especially significant is this Commission's acceptance of the fact that quasi-judicial administrative land use processes deserve a reasonable amount of time in which to occur so as to allow for balanced environmental protection and economic prosperity.

Dated at Montpelier, Vermont this 29th day of October, 1997.

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ACT 250

Vermont's

Land Use and Development Law

Title 10, Chapter 151

Including all Legislative Amendments

Effective July 1, 1997

(September 1997)

PART 5. LAND USE AND DEVELOPMENT

Chapter 151. State Land Use and Development Plans

Findings and Declaration of Intent

SUBCHAPTER 1. GENERAL PROVISIONS

SECTION

- 6001. Definitions.
- 6001a. Public auctions.
- 6001b. Low-level radioactive waste disposal facility.
- 6001c. Broadcast and communication support structures.
- 6002. Procedures.
- 6003. Penalties.
- 6004. *[Repealed.]*
- 6005. *[Repealed.]*
- 6006. *[Repealed.]*
- 6007. Act 250 disclosure statement; jurisdictional determination.

SUBCHAPTER 2. ADMINISTRATION

- 6021. Board; vacancy; removal.
- 6022. Personnel.
- 6023. Grants.
- 6024. Intragovernmental cooperation.
- 6025. Rules.
- 6026. District commissioners.
- 6027. Powers.
- 6028. Compensation.
- 6029. Act 250 permit fund.

SUBCHAPTER 3. USE AND DEVELOPMENT PLANS

- 6041. *[Omitted.]*
- 6042. Capability and development plan.
- 6043. *[Repealed.]*
- 6044. Public hearings.
- 6045. *[Repealed.]*
- 6046. Approval of governor and legislature.
- 6047. Changes in the capability and development plan.

SUBCHAPTER 4. PERMITS

- 6081. Permits required; exemptions.
- 6082. Approval by local governments and state agencies.
- 6083. Applications.

*See 4 VSA, Ch 27; 10 VSA Ch. 201, 211

- 6084. Notice.
- 6085. Hearings.
- 6086. Issuance of permit; conditions and criteria.
- 6086a. Generators of radioactive waste.
- 6087. Denial of application.
- 6088. Burden of proof.
- 6089. Appeals.
- 6090. Recording; duration and revocation of permits.
- 6091. Renewals and nonuse.
- 6092. Construction.

SUBCHAPTER 5. WASTE FACILITY PANEL

- 6101. Waste Facility Panel; Jurisdiction; Rules; Fees.
- 6102. Parties.
- 6103. Review of Provisional Certifications.
- 6103a. Review certificates of need.
- 6104. Review of Agency Determinations.
- 6105. Appeals of District Commission Decisions.
- 6106. Consolidation of Act 250 and Agency Review Proceedings.
- 6107. Appeals to the Supreme Court.
- 6108. Transition Authority.

FINDINGS AND DECLARATION OF INTENT

Whereas, the unplanned, uncoordinated and uncontrolled use of the lands and the environment of the state of Vermont has resulted in usages of the lands and the environment which may be destructive to the environment and which are not suitable to the demands and needs of the people of the state of Vermont; and

Whereas, a comprehensive state capability and development plan and land use plan are necessary to provide guidelines for utilization of the lands and environment of the state of Vermont and to define the goals to be achieved through land environmental use, planning and control; and

Whereas, it is necessary to establish an environmental board and district environmental commissions and vest them with the authority to regulate the use of the lands and the environment of the state according to the guidelines and goals set forth in the state comprehensive capability and development plan and to give these commissions the authority to enforce the regulations and controls; and

Whereas, it is necessary to regulate and control the utilization and usages of lands and the environment to insure that, hereafter, the only usages which will be permitted are not unduly

detrimental to the environment, will promote the general welfare through orderly growth and development and are suitable to the demands and needs of the people of this state;

Now, therefore, the legislature declares that in order to protect and conserve the lands and the environment of the state and to insure that these lands and environment are devoted to uses which are not detrimental to the public welfare and interests, the state shall, in the interest of the public health, safety and welfare, exercise its power by creating a state environmental board and district environmental commissions conferring upon them the power to regulate the use of lands and to establish comprehensive state capability, development and land use plans as hereinafter provided.
--1969, No. 250 (Adj. Sess.), § 1, eff. April 4, 1970.

Subchapter 1. General Provisions

§ 6001. Definitions

When used in this chapter:

- (1) "Board" means the environmental board.
- (2) "Capability and development plan" means the plan prepared pursuant to section 6042 of this title.
- (3) "Development" means the construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than 10 acres of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes. "Development" shall also mean the construction of improvements for commercial or industrial purposes on more than one acre of land within a municipality which has not adopted permanent zoning and subdivision bylaws. "Development" shall also mean the construction of improvements for commercial or industrial purposes on a tract or tracts of land, owned or controlled by a person, involving more than one acre of land within a municipality that has adopted permanent zoning and subdivision bylaws, if the municipality in which the proposed project is located has elected by ordinance, adopted under chapter 59 of Title 24, to have this jurisdiction apply. The word "development" shall mean the construction of housing projects such as cooperatives, condominiums, or dwellings, or construction or maintenance of mobile homes or trailer parks, with 10 or more units,

constructed or maintained on a tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land, and within a continuous period of five years. The word "development" shall not include construction for farming, logging or forestry purposes below the elevation of 2500 feet. The word "development" also means the construction of improvements on a tract of land involving more than 10 acres which is to be used for municipal, county or state purposes. In computing the amount of land involved, land shall be included which is incident to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings. In the case of a project undertaken by a railroad, no portion of a railroad line or railroad right-of-way that will not be physically altered as part of the project shall be included in computing the amount of land involved. In the case of a project undertaken by a person to construct a rail line or rail siding to connect to a railroad's line or right-of-way, only the land used for the rail line or rail siding that will be physically altered as part of the project shall be included in computing the amount of land involved. The word "development" shall not include an electric generation or transmission facility which requires a certificate of public good under section 248 of Title 30 or a natural gas facility as defined by subdivision 248(a)(3) of that title. The word "development" shall also mean the construction of improvements for commercial, industrial or residential use above the elevation of 2500 feet. The word "development" shall also mean exploration for fissionable source materials beyond the reconnaissance phase or the extraction or processing of fissionable source material. The word "development" shall also mean the drilling of an oil and gas well. --Amended 1993, No. 200 (Adj. Sess.), § 1, eff. June 17, 1994, amended 1997, No. 48, § 1, eff. July 1, 1997.

(4) "District commission" means the district environmental commission.

(5) "Endangered species" means those species the taking of which is prohibited under rules adopted under chapter 123 of this title.

(6) "Floodway" means the channel of a watercourse which is

expected to flood on an average of at least once every 100 years and the adjacent land areas which are required to carry and discharge the flood of the watercourse, as determined by the secretary of natural resources with full consideration given to upstream impoundments and flood control projects.

(7) "Floodway fringe" means an area which is outside a floodway and is flooded with an average frequency of once or more in each 100 years as determined by the secretary of natural resources with full consideration given to upstream impoundments and flood control projects.

(8) "Forest and secondary agricultural soils" means soils which are not primary agricultural soils but which have reasonable potential for commercial forestry or commercial agriculture, and which have not yet been developed. In order to qualify as forest or secondary agricultural soils the land containing such soils shall be characterized by location, natural conditions and ownership patterns capable of supporting or contributing to present or potential commercial forestry or commercial agriculture. If a tract of land includes other than forest or secondary agricultural soils only the forest or secondary agricultural soils shall be affected by criteria relating specifically to such soils.

(9) "Historic site" means any site, structure, district or archeological landmark which has been officially included in the National Register of Historic Places and/or the state register of historic places or which is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant.

(10) "Land use plan" means the plan prepared pursuant to section 6043 of this title.

(11) "Lot" means any undivided interest in land, whether freehold or leasehold, including but not limited to interests created by trusts, partnerships, corporations, cotenancies and contracts.

(12) "Necessary wildlife habitat" means concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life including breeding and migratory periods.

(13) "Plat" means a map or chart of a subdivision with surveyed lot lines and dimensions.

(14) (A) "Person":

(i) shall mean an individual, partnership, corporation, association, unincorporated organization, trust or other legal or commercial entity, including a joint venture or affiliated ownership;

(ii) means a municipality or state agency;

(iii) includes individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from the partition or division of land;

(iv) includes an individual's parents and children, natural and adoptive, and spouse, unless the individual establishes that he or she will derive no profit or consideration, or acquire any other beneficial interest from the partition or division of land by the parent, child or spouse;

(B) The following individuals and entities shall be presumed not to be affiliated for the purpose of profit, consideration, or other beneficial interest within the meaning of this chapter, unless there is substantial evidence of an intent to evade the purposes of this chapter:

(i) a stockholder in a corporation shall be presumed not to be affiliated with others, solely on the basis of being a stockholder, if the stockholder and the stockholder's spouse, and natural or adoptive parents, children, and siblings own, control or have a beneficial interest in less than five percent of the outstanding shares in the corporation;

(ii) an individual shall be presumed not to be affiliated with others, solely for actions taken as an agent of another within the normal scope of duties of a court appointed guardian, a licensed attorney, real estate broker or salesperson, engineer or land surveyor, unless the compensation received or beneficial interest obtained as a result of these duties indicates more than an agency relationship;

(iii) a seller or chartered lending institution shall be presumed not to be affiliated with others, solely for financing

all or a portion of the purchase price at rates not substantially higher than prevailing lending rates in the community, and subsequently granting a partial release of the security when the buyer partitions or divides the land.

(15) "Primary agricultural soils" means soils which have a potential for growing food and forage crops, are sufficiently well drained to allow sowing and harvesting with mechanized equipment, are well supplied with plant nutrients or highly responsive to the use of fertilizer, and have few limitations for cultivation or limitations which may be easily overcome. In order to qualify as primary agricultural soils, the average slope of the land containing such soils does not exceed 15 percent, and such land is of a size capable of supporting or contributing to an economic agricultural operation. If a tract of land includes other than primary agricultural soils, only the primary agricultural soils shall be affected by criteria relating specifically to such soils.

(16) "Rural growth areas" means lands which are not natural resources referred to in section 6086(a)(1)(A) through (F), section 6086(a)(8)(A) and section 6086(a)(9)(B), (C), (D), (E) and (K) of this title.

(17) "Shoreline" means the land adjacent to the waters of lakes, ponds, reservoirs and rivers. Shorelines shall include the land between the mean high water mark and the mean low water mark of such surface waters.

(18) "Stream" means a current of water which is above an elevation of 1,500 feet above sea level or which flows at any time at a rate of less than 1.5 cubic feet per second.

(19) "Subdivision" means a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, or within the jurisdictional area of the same district commission, within any continuous period of five years. In determining the number of lots, a lot shall be counted if any portion is within five miles or within the jurisdictional area of the same district commission. The word "subdivision" shall not include a lot or lots created for the purpose of conveyance to the state or to a qualified organization,

as defined under section 6301a of this title, if the land to be transferred includes and will preserve a segment of the Long Trail. The word "subdivision" shall not include a lot or lots created for the purpose of conveyance to the state or to a "qualified holder" of "conservation rights and interest," as those terms are defined in section 821 of this title. Amended 1995, No. 10 (Adj. Sess.) § 1, eff. April 4, 1995.

(20) "Fissionable source material" means mineral ore which

(A) is extracted or processed with the intention of permitting the product to become or to be further processed into fuel for nuclear fission reactors or weapons; or

(B) contains uranium or thorium in concentrations which might reasonably be expected to permit economically profitable conversion or processing into fuel for nuclear reactors or weapons.

(21) "Reconnaissance" means:

(A) a geologic and mineral resource appraisal of a region by searching and analyzing published literature, aerial photography and geologic maps; or

(B) use of geophysical, geochemical, and remote sensing techniques that do not involve road building, land clearing, the use of explosives, or the introduction of chemicals to a land or water area; or

(C) surface geologic, topographic or other mapping and property surveying; or

(D) sample collections which do not involve excavation or drilling equipment, the use of explosives or the introduction of chemicals to the land or water area.

(22) "Farming" means:

(A) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or

(B) the raising, feeding or management of livestock, poultry, equines, fish or bees; or

(C) the operation of greenhouses; or

(D) the production of maple syrup; or

(E) the on-site storage, preparation and sale of agricultural products principally produced on the farm; or

(F) the on-site production of fuel or power from agricultural products or wastes produced on the farm.

(23) "adjoining Property Owner" means a person who owns land in fee simple, if that land:

(A) shares a property boundary with a tract of land where a proposed or actual development or subdivision is located; or

(B) is adjacent to a tract of land where a proposed or actual development or subdivision is located and the two properties are separated only by a river, stream, or public highway.

(24) "Solid waste management district" means a solid waste management district formed pursuant to section 2202a and chapter 121 of Title 24, or by charter adopted by the general assembly.

(25) "Slate quarry" means a quarry pit or hole from which slate has been extracted or removed for the purpose of commercial production of building material, roofing, tile or other dimensional stone products. "Dimensional stone" refers to slate that is processed into regularly shaped blocks, according to specifications. The words "slate quarry" shall not include pits or holes from which slate is extracted primarily for purposes of crushed stone products, unless, as of June 1, 1970, slate had been extracted from those pits or holes primarily for those purposes.

--1969, No. 250 (Adj. Sess.), § 2, eff. April 4, 1970; Amended 1973, No. 85, § 8; 1979, No. 123 (Adj. Sess.), §§ 1-3, eff. April 14, 1980; 1981, No. 250 (Adj. Sess.), § 6, eff. April 28, 1982; 1983, No. 114 (Adj. Sess.), § 1; 1985, No. 64; 1987, No. 64, § 2; 1987, No. 273 (Adj. Sess.), § 2, eff. June 21, 1988; 1989, No. 154 (Adj. Sess.); No. 231 (Adj. Sess.), § 1, eff. July 1, 1991; No. 234 (Adj. Sess.), § 4. Amended 1993, Act No. 232 (Adj. Sess.), § 24, eff. March 15, 1995. Amended 1995, Act No. 30 (Adj. Sess.), § 1 eff. April 13, 1995.

§ 6001a. Public auctions

As used in this chapter "development" shall also mean the sale of any interest in a tract or tracts of land, owned or controlled by a person, which have been partitioned or divided for the purpose of resale into five or more separate parcels of any size within a

radius of five miles of any point on any such parcel, and within any period of ten years, by public auction; and "public auction" means any auction advertised or publicized in any manner, or to which more than ten persons have been invited.--Added 1973, No. 256 (Adj. Sess.), eff. April 11, 1974. However, if the sales described under this section are of interests that, when sold by means other than public auction, are exempt from the provisions of this chapter under the provisions of subsection 6081(b) of this title, the fact that these interests are sold by means of a public action shall not, in itself, create a requirement for a permit under this chapter.--1991, No. 111, § 4, eff. July 1, 1991.

§ 6001b. Low-level radioactive waste disposal facility

Any low-level radioactive waste disposal facility proposed for construction under chapter 161 of this title shall be a development, for purposes of this chapter, independent of the acreage involved. Any construction of improvements which is likely to generate low-level radioactive waste is a development, for purposes of this chapter, independent of the acreage involved. The criteria and procedures for obtaining a permit shall be the same as for any other development.--Added 1989, No. 296 (Adj. Sess.), § 6, eff. June 29, 1990.

§ 6001c. Jurisdiction over broadcast and communication support structures and related improvements

In addition to other applicable law, any support structure proposed for construction, which is primarily for communication or broadcast purposes and which will extend vertically 20 feet, or more, in order to transmit or receive communication signals for commercial, industrial, municipal, county or state purposes, shall be a development under this chapter, independent of the acreage involved. If jurisdiction is triggered for such a support structure, then jurisdiction will also extend to the construction of improvements ancillary to the support structure, including buildings, broadcast or communication equipment, foundation pads, cables, wires, antennas or hardware, and all means of ingress and

egress to the support structure. To the extent that future improvements are not ancillary to the support structure and do not involve an additional support structure, those improvements shall not be considered a development, unless they would be considered a development under this chapter in the absence of this section. The criteria and procedures for obtaining a permit under this section shall be the same as for any other development. -- Added 1997, No. 48, § 2, eff. July 1, 1997.

§ 6002. Procedures

The provisions of chapter 25 of Title 3 shall apply unless otherwise specifically stated.--1969, No. 250 (Adj. Sess.), § 26, eff. April 4, 1970.

§ 6003. Penalties

A violation of any provision of this chapter or the rules promulgated hereunder is punishable by a fine of not more than \$500.00 for each day of the violation or imprisonment for not more than two years, or both.--1969, No. 250 (Adj. Sess.), § 28, eff. April 4, 1970.

§ 6004. Repealed. 1989, No. 98 (Adj. Sess.)

§ 6005. Repealed. 1989, No. 98 (Adj. Sess.)

§ 6006. Repealed. 1989, No. 98 (Adj. Sess.)

§ 6007. Act 250 disclosure statement; jurisdictional determination

(a) Prior to the division or partition of land, the seller or other person dividing or partitioning the land shall prepare an "Act 250 Disclosure Statement." A person who is dividing or partitioning land, but is not selling it, shall file a copy of the statement with the town clerk, who shall record it in the land records. The seller who is dividing or partitioning land as part of the sale shall provide the buyer with the statement within 10 days of entering into a purchase and sale agreement for the sale or

exchange of land, or at the time of transfer of title, if no purchase and sale agreement was executed, and shall file a copy of the statement with the town clerk, who shall record it in the land records. Failure to provide the statement as required shall, at the buyer's option, render the purchase and sales agreement unenforceable. If the disclosure statement establishes that the transfer is or may be subject to 10 V.S.A. chapter 151, and that information had not been disclosed previously, then at the buyer's option the contract may be rendered unenforceable. The statement shall include the following, on forms determined jointly by the board and the commission of the department of taxes:

(1) the name and tax identification number of the seller's or divider or partitioner's spouse, and parents and children, natural or adoptive, and whether or not any of the individuals named will derive profit or consideration, or acquire any other beneficial interest from the partition or division of the land in question. However, this information will be required only to the extent that:

(A) the individuals in question have been seller or buyer of record with respect to the partition or division of other land within the previous five years, and

(B) that other land is located within five miles of any part of the land currently being divided or partitioned, or is located within the jurisdictional area of the same district environmental commission;

(2) the name and tax identification number of all individuals and entities affiliated with the seller or divider or partitioner for the purpose of deriving profit or consideration, or acquiring any other beneficial interest from the partition or division of the land, as that affiliation is conditioned and limited according to the definition of "person" in section 6001(14) of this title;

(3) a statement identifying any partition or division of land which has been completed:

(A) within the preceding five years;

(B) by any of the entities or individuals identified under subdivisions (a)(1) or (2) of this section as deriving profit or consideration or acquiring any other beneficial interest from the partition or division of the land;

(C) within five miles of any part of the land being divided or partitioned, or within the jurisdictional area of the district environmental commission in which the land is located; and

(4) notice that a permit may be required under this chapter. --1991, No. 111, § 7. (Note: effective October 1, 1991.)

(b) If, before the transfer of title, facts contained in the disclosure statement change, the seller shall provide the buyer with an amended statement in a timely manner.

(c) With respect to the partition or division of land, or with respect to an activity which might or might not constitute development, any person may submit to the district coordinator an "Act 250 Disclosure Statement" and other information required by the board, and may request a jurisdictional opinion from the district coordinator concerning the applicability of this chapter. If a requestor wishes a final determination to be rendered on the question, the district coordinator, at the expense of the requestor and in accordance with rules of the board, shall serve the opinion on individuals or entities who may be affected by the outcome of the opinion, and on parties that would be entitled to notice under section 6084, if jurisdiction were determined to exist. A jurisdictional opinion of a district coordinator shall be subject to a request for reconsideration and may be appealed to the board by the applicant, by individuals or entities who may be affected by the outcome of the opinion, or by parties that would be entitled to notice under section 6084, if jurisdiction were determined to exist. An appeal from a jurisdictional opinion of a district coordinator must be filed within 30 days of the mailing of the opinion to the person appealing. Failure to appeal within the prescribed period shall render the jurisdictional opinion the final determination with respect to jurisdiction under this chapter unless the opinion has not been properly served on parties that would be entitled to notice under section 6084, if jurisdiction were determined to exist, and on persons and entities which may be affected by the outcome of the decision, according to rules of the board. Any appeal shall be by means of a petition for declaratory ruling and must be accompanied by a \$25.00 filing fee. Such petitions will be considered and

disposed of promptly. A petition shall be treated as a contested case. The chair may issue preliminary rulings subject to timely objection of any party in interest, in which event the matter shall be considered by the board. The board shall provide due notice of the filing of a petition for declaratory ruling to each party entitled to service pursuant to section 6084 of this title.--Added 1987, No. 64, § 3 and 1991, No. 111, § 3, eff. July 1, 1991. Amended 1993, No. 232 (Adj. Sess), §25, eff. March 15, 1995.

Legislative findings. 1987, No. 64, § 1, provides: "It is the finding of the general assembly that the state of Vermont is experiencing a significant increase in the number of land subdivisions which are made for speculative purposes; that some of these subdivisions are eroding the natural resource base upon which Vermont's agricultural, forestry, mineral and recreational industries depend; that some of these subdivisions have the potential of imposing significant financial burdens upon local communities providing municipal and educational services; that it is the policy of the state of Vermont to ensure that major subdivision activity within the state comply with the criteria of Vermont's Land Use and Development Law (Act 250), in order to protect the public health, safety and general welfare; and that in order to ensure appropriate Act 250 review, it is necessary to treat persons with an affiliation for profit, consideration, or some other beneficial interest derived from the partition or division of land as a single person for the purpose of determining whether a particular conveyance is subject to Act 250 jurisdiction."

Basis for determination of number of lots. 1987, No. 65, § 10, provided: "Any lot, all portions of which are greater than five miles apart, but any portion of which are within the jurisdictional area of a district commission, shall not be counted as a lot, solely on the basis of that distinction, if it was conveyed before the effective date of this act."

The provisions of the act affecting Title 10 became effective on July 1, 1987.

Subchapter 2. Administration

§ 6021. Board; vacancy, removal

(a) An environmental board is created. The board shall consist of nine members appointed in the month of February by the governor, with the advice and consent of the senate, so that five appointments expire in each odd numbered year. The members shall be appointed for terms of four years. The governor shall appoint up to five persons, who shall be former board or district commission members, with the advice and consent of the senate, to serve as alternates for board members. Alternates shall be appointed for terms of four years, with initial appointments being staggered. The board chair may assign alternates to sit on specific cases before the board, in situations where fewer than nine board members are available to serve.--1991, No. 111, § 1, eff. July 1, 1991; Amended 1993, No. 82, § 1, eff. July 1, 1993. Amended 1993, No. 232 (Adj. Sess.), § 26, eff. March 15, 1995.

(b) Any vacancy occurring in the membership of the board shall be filled by the governor for the unexpired portion of the term.

(c) Notwithstanding the provisions of 3 V.S.A. § 2004, members shall be removable for cause only, except the chair, who shall serve at the pleasure of the governor.--1969, No. 250 (Adj. Sess.), § 3, eff. April 4, 1970. Amended 1993, No. 232 (Adj. Sess.), § 26, eff. March 15, 1995.

(d) The board chair, upon request of the chair of a district commission, may appoint and assign former commission members to sit on specific commission cases when some or all of the regular members and alternates are disqualified or otherwise unable to serve.--1989, No. 234 (Adj. Sess.), § 2.

§ 6022. Personnel

The board may appoint legal counsel and administrative personnel, as it finds necessary in carrying out its duties, unless the governor shall otherwise provide.--1969, No. 250 (Adj. Sess.), § 4, April 4, 1970; Amended 1993, No. 82, § 2, eff. July 1, 1993.

§ 6023. Grants

The board may apply for and receive grants from the federal

government and from other sources.--1969, No. 250 (Adj. Sess.), § 4, eff. April 4, 1970.

§ 6024. Intragovernmental cooperation

Other departments and agencies of state government shall cooperate with the board and make available to it data, facilities, and personnel as may be needed to assist the board in carrying out its duties and functions.--1969, No. 250 (Adj. Sess.), § 4, eff. April 4, 1970.

§ 6025. Rules

(a) The board shall adopt rules under and only to the extent of the authority granted to agencies by 3 V.S.A., chapter 25, the Vermont Administrative Procedure Act, to interpret and carry out the provisions of this chapter; however, the board may not adopt emergency rules.

(b) The rules may establish criteria under which applications for permits under this chapter may be classified in terms of complexity and significance of impact under the standards of section 6086(a) of this chapter. In accordance with that classification the rules may:

(1) provide for simplified or less stringent procedures than are otherwise required under sections 6083, 6084 and 6085 of this chapter; and

(2) provide for the filing of notices instead of applications for the permits that would otherwise be required under section 6081 of this chapter; and

(3) provide a procedure by which a district commission may authorize a district coordinator to issue a permit that the district commission has determined under board rules is a minor application with no undue adverse impact.--1969, No. 250 (Adj. Sess.), § 25, eff. April 4, 1970; amended 1973, No. 85, § 2; 1979, No. 123 (Adj. Sess.), § 4, eff. April 14, 1980; 1985, No. 52, § 3, eff. May 15, 1985; 1987, No. 186 (Adj. Sess.), eff. May 5, 1988.

(c)(1) This subsection shall apply to lots within a subdivision:

(A) that were created as part of a subdivision owned or

controlled by a person who may have been required to obtain a permit under this chapter, and

(B) with respect to which a determination has been made that a permit was needed under this chapter, and

(C) that were sold to a purchaser prior to January 1, 1991 without a required permit.

(2) The rules shall provide for a modified process by which the sole purchaser, or the group of purchasers, of one or more lots to which this subsection applies may apply for and obtain a permit under this chapter that shall be issued in light of the existing improvements, facts, and circumstances that pertain to the lots; provided, however, that the requirements of this chapter shall be modified only to the extent needed to issue those permits. For purposes of these rules, a purchaser eligible for relief under this subsection must not have been involved in creating the lots, must not be a person who owned or controlled the land when it was divided or partitioned, as a person is defined in this chapter, and must not have known at the time of purchase that the transfer was subject to a permit requirement that had not been met.

(3) Notwithstanding the provisions of subsection (a) of this section, the board may adopt emergency rules under this subsection. Notwithstanding the provisions of 3 V.S.A. chapter 25, these emergency rules may remain in effect for 180 days, before they must be replaced by permanent rules.--1991, No. 111, § 5, eff. July 1, 1991.

§ 6026. District commissioners

(a) For the purposes of the administration of this chapter, the state is divided into nine districts.

(1) District No. 1, comprising administrative district 1 as provided in section 4001 of Title 3.

(2) District No. 2, comprising administrative district 2 as provided in section 4001 of Title 3.

(3) District No. 3, comprising administrative district 3 as provided in section 4001 of Title 3.

(4) District No. 4, comprising administrative district 4 as provided in section 4001 of Title 3, excluding the towns of

Addison, Bridport, Bristol, Cornwall, Ferrisburg, Goshen, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton, Ripton, Salisbury, Shoreham, Starksboro, Vergennes, Waltham, Weybridge and Whiting.

(5) District No. 5, comprising administrative district 5 as provided in section 4001 of Title 3.

(6) District No. 6, comprising administrative district 6 as provided in section 4001 of Title 3.

(7) District No. 7, comprising administrative district 7 as provided in section 4001 of Title 3.

(8) District No. 8, comprising administrative district 8 as provided in section 4001 of Title 3.

(9) District No. 9, comprising the towns of Addison, Bridport, Bristol, Cornwall, Ferrisburg, Goshen, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton, Ripton, Salisbury, Shoreham, Starksboro, Vergennes, Waltham, Weybridge, and Whiting.

(b) A district environmental commission is created for each district. Each district commission shall consist of three members from that district appointed in the month of February by the governor so that two appointments expire in each odd numbered year. Two of the members shall be appointed for a term of four years, and the chair (third member) of each district shall be appointed for a two-year term. In any district, the governor may appoint not more than four alternate members from that district whose terms shall not exceed two years, who may hear any case when a regular member is disqualified or otherwise unable to serve.

(c) Members shall be removable for cause only, except the chairman who shall serve at the pleasure of the governor.

(d) Any vacancy shall be filled by the governor for the unexpired period of the term.--1969, No. 250 (Adj. Sess.), § 5, eff. April 4, 1970; amended 1971, No. 74, § 1; 1973, No. 54; 1985, No. 107 (Adj. Sess.), eff. March 14, 1986. Amended 1993, No. 232 (Adj. Sess.), § 27, eff. March 15, 1995.

§ 6027. Powers

(a) The board and district commissions shall have the power to compel the attendance of witnesses, and require the production of

evidence.

(b) The powers granted to the board under this chapter are additional to any other powers which may be granted to it by other legislation.

(c) The board may designate or establish such regional offices as it deems necessary to implement the provisions of this chapter and the rules adopted hereunder. The board may designate or require a regional planning commission to receive applications, provide administrative assistance, investigations, and make recommendations.

(d) The board, when it determines the workload in any district is such that unreasonable delays will result, may at the request of an overloaded district authorize the district commission of another district to sit in that district to consider applications.

(e) The board may by rule allow joint hearings to be conducted with specified state agencies or specified municipalities.

(f) [Repealed.]--1969, No. 250 (Adj. Sess.), § 25, eff. April 4, 1970; amended 1973, No. 85, § 3; 1979, No. 123 (Adj. Sess.), § 8, eff. April 14, 1980.

(f) The board may publish or contract to publish annotations and indices of its decisions, and the text of its decisions. The published product shall be available at a reasonable rate to the general public and at a reduced rate to libraries and governmental bodies within the state.--1991, No. 111, § 6, eff. July 1, 1991.

(g) Unless the board, acting on a motion of a party or on its own motion, directs the chair otherwise with respect to a particular appeal or petition, the chair may appoint a hearing officer or a subcommittee of the board to hear any appeal or petition before the board. Board members may be appointed as hearing officers, as may alternates. Any hearing officer or subcommittee shall report findings of fact and conclusions of law in writing to the board. A copy of the proposed decision shall be served on the parties pursuant to 3 V.S.A. § 811, but shall be subject to a final decision by the board. The parties shall have 15 days to request oral argument before the board. Added 1993, No. 232 (Adj. Sess.), § 28, eff. March 15, 1995.

§ 6028. Compensation

Members of the board and district commissions shall receive per diem pay and all necessary and actual expenses in accordance with 32 V.S.A. § 1010.--1969, No. 250 (Adj. Sess.), § 31, eff. April 4, 1970; Amended 1993, No. 82 § 3, eff. July 1, 1993.

§ 6029. Act 250 permit fund

There is hereby established a special fund to be known as the Act 250 permit fund for the purposes of implementing the provisions of this chapter. Revenues to the fund shall be those fees collected in accordance with rules adopted under 10 V.S.A. §§ 6025(a), 6083(a)(3) and 6089(a), gifts, appropriations, and copying and distribution fees. The environmental board shall be responsible for the fund and shall account for revenues and expenditures of the environmental board. At the commissioner's discretion, the commissioner of finance and management may anticipate amounts to be collected and may issue warrants based thereon for the purposes of this section. Disbursements from the fund shall be made through the annual appropriations process to the environmental board, and to the agency of natural resources to support those programs within the agency that directly or indirectly assist in the review of Act 250 applications. This fund shall be administered as provided in subchapter 5 of chapter 7 of Title 32, as a special program fund. --Added 1989, No. 279 (Adj. Sess.), § 2, eff. June 30, 1990; amended and reauthorized, 1993, No. 70, § 1, and 1995, No. 47, § 17; amended and reauthorized, 1997, Act 59, § 41, effective July 1, 1997.

Subchapter 3. Use and Development Plans

§ 6041. Omitted

§ 6042. Capability and development plan

The board shall adopt a capability and development plan consistent with the interim land capability plan which shall be made with the general purpose of guiding and accomplishing a coordinated, efficient and economic development of the state, which will, in accordance with present and future needs and resources, best promote the health, safety, order, convenience, prosperity and welfare of

the inhabitants, as well as efficiency and economy in the process of development, including but not limited to, such distribution of population and the uses of the land for urbanization, trade, industry habitation, recreation, agriculture, forestry and other uses as will tend to create conditions favorable to transportation, health, safety, civic activities and educational and cultural opportunities, reduce the wastes of financial and human resources which result from either excessive congestion or excessive scattering of population and tend toward an efficient and economic utilization of drainage, sanitary and other facilities and resources and the conservation and production of the supply of food, water and minerals. In addition, the plan may accomplish the purposes set forth in section 4302 of Title 24.--1969, No. 250 (Adj. Sess.), § 19, eff. April 4, 1970.

"PLANNING FOR LAND USE AND ECONOMIC DEVELOPMENT"

"(1) THE CAPABILITY OF THE LAND

"The capability of land to support development or subdivision provides a foundation for judgment of whether a proposal of development or subdivision is consistent with policies designed to make reasonable use of the state's resources and to minimize waste or destruction of irreplaceable values. Accordingly, such information regarding the physical characteristics of land as is found in the interim land capability and development plan adopted under section 6041 of Title 10, and as may hereafter be adopted as a rule of the environmental board, shall be considered a part of this capability and development plan.

"(2) UTILIZATION OF NATURAL RESOURCES

"Products of the land and the stone and minerals under the land, as well as the beauty of our landscape are principal natural resources of the state. Preservation of the agricultural and forest productivity of the land, and the economic viability of agricultural units, conservation of the recreational opportunity afforded by the state's hills, forests, streams and lakes, wise use of the state's non-renewable earth and mineral reserves, and protection of the beauty of the landscape are matters of public good. Uses which